

Law Office of Jack Silver

708 Gravenstein Hwy North, Suite 407 Sebastopol, CA 95472
Phone 707-528-8175 Email JSilverEnvironmental@gmail.com



*Via Certified Mail –
Return Receipt Requested*

AUG 29 2017

August 22, 2017

Erica Ahmann Smithies, PE
Director of Public Works
City of St. Helena
1480 Main Street
St. Helena, CA 94574

Mark Prestwich
City Manager
City of St. Helena
1480 Main St.
St. Helena, CA 94574

Chief Plant Operator/Managing Agent
St. Helena Wastewater Treatment and Reclamation Plant
1 Chaix Lane
St. Helena, CA 94574

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Ms. Ahmann Smithies, Mr. Prestwich, Chief Plant Operator, and Managing Agent:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and/or operation of the City of St. Helena Wastewater Treatment and Reclamation Plant ("Plant") and its associated sewer collection system.

River Watch hereby places the City of St. Helena ("St. Helena"), as owner and operator of the Plant and associated collection system, on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against St. Helena for continuing violations of an

effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board (“RWQCB”), San Francisco Bay Region, Water Quality Control Plan (“Basin Plan”), as the result of violations of St. Helena’s National Pollution Discharge Elimination System (“NPDES”) Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition such that violation of a permit limit places a polluter in violation of the CWA. River Watch alleges St. Helena is in violation of the CWA by violating the terms of its NPDES permit.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating St. Helena’s operations in the region at issue in this Notice is the RWQCB, San Francisco Bay Region.

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by St. Helena with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

The order violated is NPDES No. CA0038016, State Water Resources Control Board Order No. R2-2016-0003, and prior Order No. R2-2010-0105 (collectively, the “Permit”). River Watch has identified specific violations of St. Helena’s NPDES permit including raw sewage discharges and failure to either comply with or provide evidence that it has complied with all the terms of its NPDES permit.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from August 22, 2012 through August 22, 2017, St. Helena has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

i. Sanitary Sewer Overflows Occurrence

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above ground from the collection system prior to reaching the Plant, are alleged to have occurred both on the dates identified in California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on the dates when no reports were filed by St. Helena, all in violation of the CWA.

St. Helena’s aging sewer collection system has historically experienced high inflow and infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals and storm drains which are connected to adjacent surface waters including the Napa River and its tributaries such as Sulphur Creek and York Creek - all waters of the United States.

A review of the CIWQS Spill Public Report – Summary Page identifies the “Total Number of SSO locations” as 18, with 131,749 “Total Vol. of SSOs (gal)” discharged into the environment. Of this total volume, St Helena admits at least 130,005 gallons, or 98% of the total, reached a surface water. This discharge poses both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 9 recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 831741, 831744, 832694, 832695, 832704, 832706, 832727, 832729, and 833021. Included in the 9 reported SSOs are the following incidents:

(01/10/17 - Event ID# 831741) – an SSO estimated at 25,600 gallons occurred at 1443 Madrona Avenue as a result of heavy rains which overwhelmed the system. None of the sewage was recovered; it entered a storm drainpipe and discharged to Sulphur Creek.

(02/07/17 - Event ID # 832706) – an SSO estimated at 63,725 gallons occurred at 290 Pope Street caused by I/I during heavy rain. None of the sewage was recovered; it entered a storm drainpipe and discharged to Sulphur Creek.

(02/09/17 - Event ID # 832727) – an SSO estimated at 4,600 gallons occurred at 1766 Crinella Drive as a result of I/I during heavy rain. The sewage reached the Napa River via an un-named drainage ditch.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewer collection system) to a water of the United States without complying with any other sections of the Act. Further, these alleged discharges are violations of the St. Helena's NPDES Permit, specifically Order No. R2-2016-0003, which states in Section III. Discharge Prohibitions:

C. The bypass of untreated or partially-treated wastewater to waters of the United States is prohibited, except as provided for in Attachment D. sections I.G.2 and I.G.3.

E. Any sanitary sewer overflow that results in a discharge of untreated or partially-treated wastewater to waters of the United States is prohibited.

St. Helena's alleged sewage discharges which occurred between August 22, 2012 and March 1, 2016 are violations of St. Helena's previous NPDES Permit, specifically Order No. R2-2010-0105, which states in Section III. Discharge Prohibitions:

C. The bypass of untreated or partially treated wastewater to waters of the United States is prohibited, except as provided for in the conditions stated in Subsections I.G.2 and I.G.4 of Attachment D of this Order.

E. Any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.

River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

ii. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. St. Helena's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by St. Helena as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the SSO began, the time St. Helena received notification of the SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

(09/24/13- Event ID #803960) – the spill start time is reported as 12:30 pm, agency notification time as 12:40 pm, operator arrival time as 12:50 pm, and spill end time as 1:00 pm. All times are in ten minute intervals. The estimated volume of the spill is reported as 10 gallons.

(02/09/17 - Event ID #832729) – the spill start time and agency notification time are both reported as 2:53 pm, and the operator arrival time is reported as just three minutes later, at 2:56 pm.

(02/20/17 - Event ID #833021) – the spill start time and agency notification time are both reported to be 7:22 pm. The operator arrival time is stated as 7:31 pm, and the end time of the 3,750 gallon spill is 11:10 pm.

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Many of St Helena's SSO reports list the spill start and agency notification times as exactly the same time. Without correctly reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

b. Failure to Warn

Although St. Helena posts warning signs for some of its SSOs that reach a surface water, River Watch contends St. Helena is understating the significance of the impacts of its CWA violations by failing to post health warning signs for all SSOs which pose an imminent and substantial endangerment to health or the environment regardless of location.

iii. Failure to Mitigate Impacts

River Watch contends St. Helena fails to adequately mitigate the impacts of SSOs. St. Helena is a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires St. Helena to take all feasible steps, and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and impact of the release. As St. Helena is severely underestimating SSOs which reach surface waters, River Watch contends St. Helena is not conducting sampling on most SSOs.

The EPA's "Report to Congress on the Impacts of SSOs" identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of St. Helena's SSOs. Neighboring waterways include sensitive areas for

the red-legged frog, steelhead trout, and the western pond turtle. There is no record of St. Helena performing any analysis of the impact of SSOs on habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies containing biological habitat from the impacts of SSOs.

B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by structural defects in a sewer collection system and associated treatment ponds result in discharges to adjacent surface waters either directly or via underground hydrological connections. Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage.

River Watch contends untreated or partially treated sewage is discharged from St. Helena's collection system and its treatment ponds either directly or via hydrologically connected groundwater to surface waters including Sulphur Creek, York Creek, and the Napa River. Due to SSOs, surface waters become contaminated with pollutants, including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from St. Helena is a violation of its NPDES permits and thus the CWA.

C. Creation of Pollution, Contamination, or Nuisance

Between January 29, 2014 and February 7, 2014, approximately 5,035,000 gallons of partially treated wastewater was discharged to groundwater from facultative pond 1A. The discharge, which had not been fully treated to remove pollutants, also contained levels of total and fecal coliform which pose an imminent and substantial threat to health or the environment.

This unauthorized discharge was a violation of NPDES Permit CA0038016 – Order No. R3-2010-0105, Provision VII. A. 2, Attachment G – Regional Standard Provisions and Monitoring and Reporting Requirements, I. Standard Provisions – Permit Compliance, I. Other, 1., which provides: “Neither the treatment nor the discharge of pollutants shall create pollution, contamination, or nuisance as defined by California Water Code Section 13050.”¹

D. Violations of Effluent Limitations and Monitoring Requirements

A review of St. Helena's Self-Monitoring Reports (“SMRs”) identifies the following violations of effluent limitations imposed under St. Helena's NPDES Permit:

¹ The RWQCB issued Order No. R2-2015-1021, Administrative Civil Liability for Unauthorized Discharge to Groundwater/ Settlement Agreement and Stipulation for Entry of Order, on November 6, 2015, regarding this discharge from Pond 1A.

i. Reported Violations

a. Deficient Monitoring

The SMRs identify 2 violations of NPDES Permit No. CA0038016 – Order No. R2-2010-0105, Attachment E – Monitoring and Reporting Program (MRP), IV. Effluent Monitoring Requirements:

(12/22/2014) Erroneous collection of two BOD5 samples at EFF-00a instead of EFF-001D during discharge event; therefore only two samples were collected when the Permit requires three samples per week.

(01/19/2015) Erroneous collection of two BOD5 samples at EFF-00a instead of EFF-001D during discharge event; therefore only two samples were collected when the Permit requires three samples per week.

b. Violations of Dilution Requirements

The SMRs identify 1 violation of NPDES Permit No. CA0038016 – Order No. R3-2010-0105, III. Discharge Prohibitions, B, which provides: “Discharge at any point at which the treated wastewater does not receive an initial dilution of at least 50:1 is prohibited. Available dilution shall be determined by the measured flow at USGS Station No.11456000 (Napa River near St. Helena) and effluent flow as monitored at EFF-001 as defined in the Monitoring and Reporting Program (MRP, Attachment E).”

(12/18/2014) The required dilution ratio of 50:1 (river:effluent) was not met for four hours. The dilution ratio dropped to 49:1, 49:1, 48:1, and 48:1, at 12:00, 13:00, 14:00, and 15:00, respectively.

The SMRs identify 1 violation of NPDES Permit No. CA0038016 – Order No. R2-2016-0003, III. Discharge Prohibitions, B, which provides: “Discharge at Discharge Point No. 001 is prohibited unless the river flow-to-effluent ratio is as least 50:1”

(03/04/2017) The river flow-to-effluent ratio was 46:1, below the minimum permit requirement of 50:1

c. Violations of Effluent Limitations

The SMRs identify 19 violations of NPDES Permit No. CA0038016 – Order No. R3-2010-0105, IV. Effluent Limitations and Discharge Specifications, A. Effluent Limitations – Discharge Point 001:

(09/27/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 37 MPN/100 ml

(10/12/2012) Total Coliform Single Sample Maximum limit is 240 MPN/100 ml and reported value was 500 MPN/100 ml

(10/12/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 30 MPN/100 ml

(10/15/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 50 MPN/100 ml

(10/15/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 30 MPN/100 ml

(10/15/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 50 MPN/100 ml

(10/23/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 30 MPN/100 ml

(10/23/2012) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 50 MPN/100 ml

(12/26/2012) Total Chlorine Residual Instantaneous Maximum limit is 0.0 mg/L and reported value was 0.41 mg/L

(12/27/2012) Total Chlorine Residual Instantaneous Maximum limit is 0.0 mg/L and reported value was 0.08 mg/L²

(05/22/2013) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 30 MPN/100 ml

(05/23/2013) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 30 MPN/100 ml

(10/25/2013) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 50 MPN/100 ml

(10/30/2013) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 50 MPN/100 ml

(10/31/2013) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 50 MPN/100 ml

(02/12/2014) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 33 MPN/100 ml

(02/13/2014) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 33 MPN/100 ml

(02/14/2014) Total Coliform Moving Median limit is 23 MPN/100 ml and reported value was 33 MPN/100 ml

(12/22/2014) Total Cyanide 30-Day Average limit is 15 ug/L and reported value was 16 ug/L³.

² The RWQCB issued Order No. R2-2014-1010, Administrative Civil Liability / Acceptance of Conditional Resolution and Waiver of Right to Hearing, on April 2, 2014, regarding effluent violations which included Total Chlorine Residual exceedances of December 26, 2012 and December 27, 2012.

³ The RWQCB issued Order No. R2-2016-1029, Administrative Civil Liability / Acceptance of Conditional Resolution and Waiver of Right to Hearing on October 5, 2016, for effluent violations which included the exceedance of Total Cyanide on December 22, 2014

The SMRs identify 18 violations of NPDES Permit No. CA0038016 – Order No. R3-2016-0003, IV. Effluent Limitations and Discharge Specifications:⁴

(03/07/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.39
SU
(03/08/2016) Total Coliform Daily Maximum limit is 240 MPN/100 mL and reported value was 1600 MPN/100 mL
(03/09/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.44
SU
(03/10/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.30
SU
(03/13/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.45
SU
(03/14/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.10
SU
(03/15/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.15
SU
(03/16/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.24
SU
(03/17/2016) pH Instantaneous Minimum limit is 6.50 SU and reported value was 6.38
SU (01/25/2017) Total Cyanide Daily Maximum limit is 30 ug/L and reported value was 90 ug/L
(01/31/2017) Total Cyanide Monthly Average limit is 15 ug/L and reported value was 53 ug/L
(01/31/2017) Average Monthly Percent Removal of BOD5 @ 20 Degree C. shall not be less than 85%, and reported value was 78%
(02/04/2017) Total Cyanide Daily Maximum limit is 30 ug/L and reported value was 50 ug/L
(02/28/2017) Total Cyanide Monthly Average limit is 15 ug/L and reported value was 90 ug/L
(02/28/2017) Total Cyanide Daily Maximum limit is 30 ug/L and reported value was 130 ug/L
(02/28/2017) Average Monthly Percent Removal of BOD5 @ 20 Degree C. shall not be less than 85%, and reported value was 80.9%
(03/02/2017) Total Cyanide Monthly Average limit is 15 ug/L and reported value was 130 ug/L
(03/02/2017) Total Cyanide Daily Maximum limit is 30 ug/L and reported value was 130 ug/L .

d. Violations of Water Reclamation Requirements

The SMRs identify 23 violations of Order No. 87-090:

⁴ Administrative Civil Liability Order No. R2-2016-1029 also included the exceedance of Total Coliform on March 8, 2016, and the pH violations occurring on March 7, 2016, March 9, 2016, March 10, 2016, March 14, 2016, March 15, 2016, March 16, 2016, and March 17, 2016

(09/17/2012) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 42 mg/L

(09/25/2012) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 44 mg/L

(10/08/2012) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 87 mg/L

(06/12/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 42 mg/L

(06/20/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 49 mg/L

(09/03/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 45 mg/L

(09/20/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 44 mg/L

(10/04/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 101 mg/L

(10/11/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 51 mg/L

(11/08/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 46 mg/L

(12/04/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 67 mg/L

(12/13/2013) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 54 mg/L

(05/01/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 46 mg/L

(06/01/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 46 mg/L

(06/17/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 51 mg/L

(08/08/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 70 mg/L

(08/28/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 59 mg/L

(09/09/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 59 mg/L

(11/25/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 81 mg/L

(11/26/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 61 mg/L

(12/09/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 111 mg/L

(12/10/2014) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 124 mg/L

(03/12/2015) Biochemical Oxygen Demand Daily Maximum limit is 40 mg/L and reported value was 76 mg/L.

Furthermore, River Watch contends St. Helena's irrigation fields lack sufficient hydraulic capacity, and are unable to adequately absorb the nutrients in secondary treated effluent during certain times of the year. Irrigating already saturated fields causes runoff and can impact the nearby Napa River. High BOD levels decrease available oxygen, threatening the survival of fish and other aquatic organisms.

E. Impacts to Beneficial Uses

The aquatic environment of the Napa River has many beneficial uses as defined in the RWQCB's Basin Plan, including water contact recreation, warm and cold freshwater habitat, wildlife habitat, fish spawning and migration, and preservation of rare and endangered species. Discharges in excess of effluent limitations, SSOs, and overwhelming already saturated irrigation fields cause prohibited pollution by unreasonably affecting beneficial uses. The Napa River, as well as its tributaries Sulphur Creek and York Creek, contain sensitive species and support important recreational value. The area around the Plant is home to the western pond turtle, a California species of special concern, the red-legged frog, and steelhead trout which spawn in the Napa River and are recognized federally as a threatened species.

River Watch is understandably concerned as to the effects of both surface and underground exceedances of St. Helena's NPDES Permit limitations to beneficial uses applicable to the Napa River and its tributaries, as well as the impacts of SSOs in and around the diverse and sensitive ecosystem of the Plant and the locations where sewage spills from St. Helena's collection system have occurred.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the City of St. Helena, as owner and operator of the City of St. Helena Wastewater Treatment and Reclamation Plant and its associated collection system, as well as those of St. Helena's employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The Plant, located at 1 Chaix Lane, provides secondary treatment of domestic and commercial wastewater from a service area population of approximately 6,000. St. Helena's collection system consists of approximately 18.8 miles of sewer pipelines ranging in diameter from 4 to 24 inches, and one pump station. The Plant has an average dry weather design secondary treatment capacity of 0.50 million gallons per day ("mgd"). Treatment processes include solids grinding by comminutor, biological treatment through a series of ponds, and chlorine disinfection.

Wastewater enters the Plant at the influent pump station via gravity flow, and enters ponds 1A and 1B, which are facultative ponds with in-pond digesters. Pond 1A has a surface area of 2.9 acres and a depth of 10 feet. Pond 1B is 2.1 acres with a depth of 14 feet. Pond 2 is a high rate aeration pond with a surface area of 5.1 acres and a depth of 3 feet. Pond 3 is an algae sedimentation pond where biological solids settle, with a 2.5 acre surface area and depth of 9 feet. Ponds 4 and 5 are maturation / storage ponds providing time for further breakdown of wastewater constituents and storage of treated wastewater. Pond 4 has a 3-acre surface area and depth of 11.5 feet, while Pond 5 is 6.7 acres and 13 feet in depth. Pond 5 is approximately 100 feet to the southwest of the Napa River, with an effluent control facility at the southeastern corner of Pond 5 between the pond and the River.

St. Helena maintains an 88-acre reclamation / disposal facility adjacent to and southeast of the ponds, where treated wastewater is discharged to land via spray irrigation of open grass fields. In addition, less than two percent of Plant effluent is reused to irrigate a redwood tree farm and to grow mosquito fish. Discharge to land is regulated by Order No. R2-87-0090. During wet weather, when the irrigation fields are saturated, treated effluent is discharged into the Napa River through a shallow water outfall (Discharge Point 001). St Helena is required by its NPDES Permit to maintain a minimum of 50 to 1 river to wastewater dilution flow ratio. As previously stated, River Watch alleges St. Helena discharges to the irrigation fields also at times when the fields are saturated and cannot absorb the effluent, leading to runoff.

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for St. Helena which relate to its ownership and operation of the Plant and associated sewer collection system as described in this Notice.

5. Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is August 22, 2012 through August 22, 2017. This Notice also includes all violations of the CWA by St. Helena which occur during and after this Notice period up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and ground waters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice.

All communications should be directed to counsel identified below:

Jack Silver, Esq.
Law Office of Jack Silver
708 Gravenstein Highway N., #407
Sebastopol, CA 95472
Tel. 707-528-8175
Email: jsilverEnvironmental@gmail.com

David J. Weinsoff, Esq.
Law Office of David J. Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
Email: david@weinsofflaw.com

RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with St. Helena's staff to tailor remedial measures to the specific operation of the Plant and associated sewage collection system. In advance of that conversation, River Watch identifies the following set of remedial measures that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns.

I. DEFINITIONS

Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for sewer lines, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade such as the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies.

Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system.

Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located sufficiently proximate to a surface water that if defective, could allow exfiltration to that surface water. Whether a line is "sufficiently proximate" will depend upon a number of factors including age, composition and PACP rating of the sewer line in question, the nature of the defect, soil types, and groundwater patterns.

Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:

- 5 – Most significant defect
- 4 – Significant defect
- 3 – Moderate defect
- 2 – Minor to moderate defect
- 1 – Minor defect.

II. RECOMMENDED MEASURES

A. Sewer Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in St. Helena's sewer collection system sufficiently proximate to a surface water and determined to pose a risk of exfiltrating to that surface water, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, St. Helena will:

- a. Repair or replace all sewer lines found to be Significantly Defective; and,
- b. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in St. Helena's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced. Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If St. Helena determines that the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, it shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, St. Helena shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 5 or 4 based on the PACP rating system shall be repaired or replaced within three (3) years after the rating determination.

5. Provision in St. Helena's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. This program shall begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of St Helena's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

- a. The method or calculations used for estimating total spill volume, spill volume that reached surface waters, and spill volume recovered;

- b. For Category I and II Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began; and,
- c. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO, or other photographic evidence that may aid in establishing the spill volume.

2. Pursuant to the St. Helena's legal obligation under the Statewide WDR, Section D.7.v., St. Helena shall develop and implement an adequate spill response training and sampling program to determine the nature and impact of all SSOs. St. Helena shall implement and place in its Sewage System Overflow Emergency Response Plan ("OERP") the following:

- a. Detailed cleanup and disinfection procedures including methods and chemicals used to reduce the potential for human health risks and adverse environmental impacts that are associated with an SSO event, that include the following:
 - i. Sampling for human specific pathogens or human markers to ensure that all infectious materials have been either removed or mitigated. Sampling for human specific pathogens or human markers to ensure that all infectious materials have been either removed or mitigated.
 - ii. In any area in which St. Helena cannot confirm that all of the infectious materials from an SSO have been removed or mitigated, St. Helena shall post appropriate public notification signs and place barricades to keep vehicle and pedestrians away from contact with spilled sewage. For example, signs will be posted at creeks and streams which have been contaminated as a result of an SSO and at visible access locations until the risk of exposure has subsided to acceptable background levels. Warning signs should be checked every day to ensure they are still in place. Major spills warrant broader public notice. For major spills, St. Helena shall contact local media when significant areas may have been contaminated by sewage and may pose a danger to public health. The signs and other public notices will not be removed until the Health Department has determined there is no further risk to public health and the environment.
- b. Water quality sampling and testing is required to determine the extent and impact of the SSO whenever there is an SSO that either enters a surface water or is discharged to a surface water where it poses a risk to public health or the environment. The water quality sampling procedures shall include:
 - i. The first responder shall collect samples if required. Samples should be collected as soon as possible after the discovery of the SSO event.

- ii. The water quality samples should be collected, where feasible, from upstream of the spill, from the spill area, and downstream of the spill in flowing water. In addition, samples should be collected near the point of entry of the spilled sewage and every 100 feet along the shore on impoundments.
 - iii. Pursuant to the Statewide WDR, Section on D subsection 7, St. Helena shall sample to determine the nature and extent of any SSO. The water surface basic analyses shall include fecal coliform, E. coli, biochemical oxygen demand (BOD), dissolved oxygen, and ammonia. The hard surface basic analyses shall include total coliform, fecal coliform and ammonia. Additional samples shall be taken to determine when posting of warning signs can be discontinued.
 - iv. If the SSO poses an imminent and substantial endangerment to public health or the environment that cannot be fully mitigated by St. Helena's current SOPs, St. Helena shall consult a qualified biologist, health care specialist or equivalent professional to mitigate the effects of the SSO on the environment.
3. St. Helena shall create a link from its website to the SWRCB's CIWQS SSO Public Reports and to SSO Reporting. Notification shall be given by St. Helena to all customers and other members of the public of the existence of the web-based reporting system, including a commitment to respond to private parties submitting overflow reports.
4. St. Helena shall perform human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from SSOs or exfiltration. St. Helena will begin performing background monitoring of surface waters twice a year, once in the dry season and once in the wet season, beginning in December 2017. Testing for human markers is included in this sampling. If human markers are present in the surface water testing, St. Helena shall make its best efforts to determine the source of the contamination and eliminate that source.
5. Creation of website capacity to track information regarding SSOs or, in the alternative, the creation of a link from St. Helena's website to the CIWQS SSO Public Reports. Notification shall be given by St. Helena to all customers and other members of the public of the existence of the web-based program, including a commitment to respond to private parties submitting overflow reports.
6. Performance of human marker sampling on surface waters adjacent to sufficiently proximate sewer lines to test for sewage contamination from exfiltration.

C. Lateral Inspection/Repair Program

Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

1. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

2. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

3. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, or (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

4. Upon replacement or repair of any part of the sewer lateral

5. Upon issuance of a building permit with a valuation of \$50,000.00 or more; or

6. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

D. Receiving Water Limitations

St. Helena's NPDES Permit contains receiving water limitations. St. Helena reports some but not all of its Receiving Water monitoring on-line. Within one (1) year, St. Helena shall either provide documentation or complete studies demonstrating compliance with all of its Receiving Water limitations.

E. Chemical Root Control

1. St. Helena shall use chemicals approved and/or recommended by the EPA or RWQCB, San Francisco Region. All applications of chemicals shall comply with the recommendations of the manufacturer of the chemical and as required by CAL-OSHA. Within one (1) year, St. Helena shall develop revised methods for the application of root control agents that lessen the incident of these agents escaping the collection system and keeping the public informed. These methods shall include:

- a. Blocking the line upstream and down-stream of the area of application;
- b. Using root control agents that have a half-life of sixty (60) days or less and the breakdown products are non-toxic to aquatic plants or animals;
- c. Developing and implementing best management practices to preclude the escape of the root control agent from the sewer line;
- d. Recordkeeping that includes identifying the PACP rating in the sewer collection section being treated, a map identifying locations where treatment occurs, the chemical(s) used including the MSDS sheets, and the amounts applied;

- e. Not applying any root control agent to any sewer line that has a known PACP rating of 4 or 5 unless St. Helena can ensure that none of the root control agent will escape the sewer line through any line defect;
- f. Not knowingly applying any root control agent in any location where groundwater can be contaminated via infiltration or exfiltration; and
- g. Verifying, by way of CCTV'ing of the sewer lines prior to the expiration of the applicable warranty, that the root control agent applied worked effectively to remove the identified root(s).

2. St. Helena shall post on its website a map showing where a root control agent may be used throughout the sewer system and provide a contact number for St. Helena to respond to questions.

3. These requirements shall be included in St. Helena's updated SSMP within six (6) months.

F. SSMP.

St. Helena's SSMP shall be kept current and properly certified. All documents relating to the certification shall be provided on St. Helena's website.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, swimming, fishing, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by St. Helena's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500.00 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages St. Helena to contact River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

Service List

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N. W.
Washington, D.C. 20460

✓ Alexis Strauss, Acting Regional Administrator
U.S. Environmental Protection Agency
Pacific Southwest, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Michael A.M. Lauffer, Acting Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812

Thomas B. Brown, Esq.
Burke, Williams & Sorensen, LLP
1901 Harrison Street, Suite 900
Oakland, CA 94612-3501